G. R. S. 58]

Previous references.

File No. 302-13

1913.

(Courts)

Serial Nos. 1-4

Later references.

A Person

GENERAL AND REVENUE SECRETARIAT

Serial Nos. 1—4

Part B for Sep 14

SUBJECT.

Memorial of Lingiah Praying for the remission of the sentence of seven years rigorous imprisonment passed on him

Sl. 1 From the Registrar Chief Court No 3920/314 d. 1.4.14. Forwards the memorial alone with the records in the case

2 To the above office No J. 3350 d. 26 5.14. Requests him to forward for reference & return the records in a certain case in which the Offg Chief Judge raised the question whether the effect of allowing an appellate court to order a retrial without reversing the finding of the Subordinate Court would not be

GPB—5,000—22-10-16

P.T.O

A Pastr
31.X.14

to give the appellate court by implication the power of enhancing a sentence though it is not a chief court.

3. From the same officer
do. d. 28.5.14.

Intimates that the reference required is to a case reported at page 212, vol XI of the Mysore Chief court Reports.

4. To the Registrar. Chief court.
no J 848 d. 23.9.14.

States for the information of the Judges of the chief court & for Communication to the memorialist that the memorial has been rejected

3209

G.R.S. 111 1913-14

GENERAL AND REVENUE SECRETARIAT.

(Courts)

NOTES

Ab 302

File No. 242 of 1913

FILE HEADING.

Memorial of Ramiah praying for the remission of the sentence of seven years' rigorous imprisonment passed on him

From

The Registrar, Chief Court

No. 3920/3.4 Dated 1-4-1914 Received 3-4-1914

Diary No.	Enclos. 2 + 2 cards Spare Copies.	Serial No. 1
J3209		

BRIEF ABSTRACT OF LETTER.

Forwards the memorial alongwith the entire records of the case.

NOTES AND ORDERS.

1) Sub

Rs. 116

6/4/1914

2) The memorialist Ramiah was convicted by the Sessions Judge of Mysore of an offence under Section 457 IPC &

5,000—15-6-12.

G. R. S. 12]

General and Revenue Secretariat. | Ct. File No. 302 of 1913-14

Serial No.

house-breaking by night; and in view of four previous convictions the last of which carried a sentence of five years, he was sentenced to rigorous imprisonment for seven years. The conviction & sentence were upheld by the Chief Court.

3) The Memt. was caught red handed when he was running away from the house of P.W. 1 which house he broke into on the night of 23rd Aug 1913. He was seen inside the house by P.W 2 & 3 who were living in the same house and who woke up on account of the noise made by him. When they gave the alarm, he ran away, scaling over a wall but was pursued & apprehended & taken to the Police Station.

4) The evidence against him is, as the Chief Court remark, of the strongest possible character. The sentence also is not excessive, seeing that his previous term was one of five years. There is therefore no ground at all

G P B—60,000—7-11-13

General and Revenue Secretariat. | CS File No. 302 of 1913.

Serial No.

for interfering with the verdict of the Court.

5) The memorial may therefore be rejected

Or Ser)
First Member)

SPD 18/4

Dunraghlan 21/4

4/VIII

Could the Sess Judge order Committal to Sess Court without reversing the Conviction?

Was he Competent to try the Case himself?

Are there any authorities either way on these points?

27/4/14 Dunn 28/4

Ep Minutes on Contents

6) S. 423(b) enables an appell. Court to reverse the finding & sentence and then order a retrial &c. In this case the finding was not reversed. The effect of allowing this would be

NOTE—Contn. sheet.

GPB—60,000—7-11-13

G. R. S. 12]

General and Revenue Secretariat. | File No. 302 of 1913-14

Serial No.

to give the appellate Court by implication the power of enhancing a sentence, though it is not a Chief Court. I raised this point (as I recollect) in a case in the Chief Court, and probably the majority held the other view. Please enquire & get this case for reference.

for

8/5/14 draft sent 11/5

7. Subd with a desp. do to the Regr, Chief Court

No. 116
18/5/1914 VKL

8) Issued 18/5/14

2 to V. Rajasekhara Mudaliar Esq
Registrar Chief Court
Do. J. 3350 d 20-5-14
Requests him to send for the perusal of Govt the records of a certain case in the Chief Court in which the Offg Chief Judge raised the question whether the

General and Revenue Secretariat. | C5 File No. 302 of 191 3-14 | 3209 | 3870 (5

Serial No.	
	the effect of allowing an appellate court to order a retrial without reversing the finding of the Subordinate court would not be to give the appellate court by implication the power of enhancing a sentence though it is not a Chief court.
3	From the same officer D.O. Dated 28th May 1914. Intimates that the reference required is to a case reported at page 212 Vol XI of the Mysore Chief court Reports.
a)	Subd Jr Asst. The Mysore Chief court Reports Vol XI containing the report of the case – In the matter of Raja Kandlan – is herewith submitted. Mc 30-5-14. 1st Member 30/5
b)	The prisoner M was sen tenced tried by the City Magte of Mysore and sentenced to R.I. for 18 months. He appealed to

Serial No.

the Sess. Judge of Mysore, who Considered that the appellant had been let off too lightly and directed that the Case should be Committed to the Sessions. [Personally I am of opinion that he was wrong and the reasons are given in a judgt of mine reported in Mys. Ch Ct Rpts XI. 213] He was empowered to do so under the authority of the Ch. Court Case. The Case came before himself and he sentenced him to 7 years R.I. It would have been better if the Case had gone before another judge, as the Sess. trial before him could be no more than a mere nominal trial. But I can find no authority for saying that such trial was not legal. Virtually, the prisoner's sentence has thus been enhanced to 7 years in an appeal by him against the sentence, though the law expressly forbids

R. S. 12]

General and Revenue Secretariat.

C/S File No. 302 of 1913-14

Serial No.

such enhancement, except by the Chief Court.

11) The appeal was summarily dismissed by the Chief Court

12) I am not quite sure if these Considerations justify the reduction of the Sentence to 2 or 3 years of rigorous imprisonment.

13) The Chief Court may be (unofficially) Consulted.

[redacted]

Recd 26/7

26/7/14

NOTE—Contn. sheet.

P.T.O.

GIP—65,000—17-6-12.

G. R. S. 12]

3670 8

General and Revenue Secretariat.

ct File No. 302 of 1913-14

Serial No.	
R.O.N. I 4-14 dated 28th July 1914.	(14) Forwarded to the Registrar, Chief Court, for favour of opinion of the Judges of the Chief Court on the points raised by the First Member of Council.
Pages 5, 6 & 7. paras 10, 11 & 12.	By order, N M Rao Ramachandra Rau For Offg Secy to Govt
No. 487 41 III 4/8 pr	(15) The Judges consider that this is properly a matter for the legal advisers of the Government, not the Courts, to consider. They would be inclined to ask to be excused from giving a non-judicial opinion on a question of law arising in an appeal decided by this Court itself.
	(16) If they are to give an opinion they are bound to state that the law is that laid down by the Full Bench in accord with three of the High Courts in British India. They cannot, consistently with their position, advise the Government to disregard the law laid down by the Full Bench.
	(17) As to the evidence and sentence in the case under consideration a Bench of this Court has already considered them and the Judges have nothing to say on the subject.
	H Mallikarjuna Rao
	1st August 1914. Ag, REGISTRAR.

NOTE—Contn. sheet.

GPB—60,000—7-11-13

3870

G. R. S. 12]

General and Revenue Secretariat. | C5 File No. 302 of 1913-14

Serial No.

18) Subd.

Hy. 4.8.14 — 8/8/14

First Committee)

19) The attitude of the Chief Court is perhaps reasonable from their point of view. It is all the same a hard case for the prisoner.

20) If the other members agree, we may recommend to H.H. that the sentence may be reduced to 3 yrs. imprisonment for 3 years. If there is a difference of opinion, I shall not press my views.

766 11.8.14

9/8/14

16/8

21. I am inclined to agree with the Judges of the Chief Court.

5.9.14

NOTE—Contn. sheet.

GPB—60,000—7-11-13

G. R. S. 12]

3870

General and Revenue Secretariat. | 45 File No. 802 of 1913-14

(10

Serial No.

C.S to 22. Ld do I
circulation with reference
to 20 ES 15/9

9/9

Dagree Ld.
DSN
14.9.14.

DSN
III Secn
15/9

23. In view of the light of the opinions expressed by the three members the Dewan may the question be dropped? attention is respectfully invited to the last para sentence on p. 20.

ES
15/9

First member)

24 Seen
15/9/14 Secn 16/9

25 A reply to the Memorialist is due 8 Hamilt Secn 16/9

26 Put up draft rejecting memorial.
ES 16/9

27 Draft Subd.
KG. 16
17.9.14 III
First member)

ES
18/9

28 Draft approved by First member.
MS
20.9.14
Secn 21/9

GPB—60,000—7-11-13

3870

G. R. S. 12]

General and Revenue Secretariat.

cts. File No. 302 of 1913.

Serial No.	
	I, O Issue
	68 249
4	To, The Registrar, Chief Court.
	No. J 848, D. 23. 9. 14.
	States, for the information of the Judges of the Chief Court and for Communication to the memorialist Lingiah, that his memorial has been rejecte

NOTE—Contn. sheet.

GPB—10,000—13-6-14

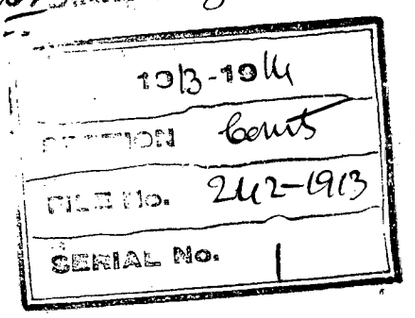
No. 3920 Inw. & Records
314

111

Bangalore,

Dated 1st April 1914.

DIARY No. J3209



From

THE REGISTRAR OF THE
CHIEF COURT OF MYSORE.

To

THE SECRETARY TO GOVERNMENT,
GENERAL AND REVENUE DEPARTMENTS.

Sir,

I am directed to forward a memorial addressed to His Highness the Maharaja by Lingiah accused in Mysore Sessions Case No. 9 of 1913-14 on the file of the Sessions Judge of Mysore Division and appellant in Criminal Appeal No. 59 of 1913-14 on the file of this Court.

The entire record of the case is herewith forwarded.

I have the honor to be,

Sir,

Your most obedient servant,

Registrar.

28

calling for the records of a certain Crl. case in the Chief Court

J. R. S. 26]

Diary No. of letter replied to

General and Revenue Secretariat

( )

, the 191 .

Date of issue 20-5-14

Signed by Hon. SPR

File No. 2420/1913

Serial No. 2

D.O. No. J. 3380.

Dear Sir,

Adverting to your Crl. letter no 3920/314 of the 1st April 1914, forwarding a memorial from Lupiah accused in Mysore Sessions case no. 9 of 1913-14, I am desired to request you to be so good as to send for perusal by Govt. the records of the in the Chief Court a certain case/ in which the Hon. Chief Judge raised the question whether the effect of allowing an appellate Court to order a retrial without reversing the finding of the sub-

Cl. over.

SUBJECT.

subordinate court would not be to give the appellate court by implication the power of enhancing a sentence though it is not a trial court.

... the favour of an early compliance is requested.

Yours sincerely

To

V. A. Rajarama Mudaliar Esq

Registrar, Trial Court

Mg. 116

18/5/14

List of enclosures,

Copied by 19/5

Examined by

GPB—25,000—4-3-13

(4

J 3870

DEPARTMENT DIARY No.....

Bangalore
28 May 1914
FILE
SERIAL No. 3

Dear Sir,

Your D.O of the 20th inst.

The reference required is to the case reported at p. 217 Vol. XI of the Mysore Chief Court Reports.

Yours sincerely
S Rajagopalachar

S. P. Rajagopalachar Esq BA BL
Asst Secy to Govt.

1/2 2479

G. R. S. 26]

(5 Cl File No. 302 of 1913
Serial No. 4

Diary No. of letter replied to

No. J 848 Con 1.

General and Revenue Secretariat
( )
the 191 .

To

The Registrar,
Chief Court

Date of issue 23/9/14.

Signed by M. G. Srinivasa Iyer.

Sir,

Adverting to your letter No 3920/3141 dated the 1st April 1914 forwarding a memorial from Linigiah, convicted in Mysore Sessions Case No 9 of 1913-14 on the file of the Sessions Judge of the Mysore Dist, praying for the remission of the sentence of seven years' rigorous imprison-

P.T. over.

SUBJECT.

3

-ment passed on him, I am directed to state for the information of the Judges of the Chief Court and for communication to the Memorialist that his memorial has been rejected.

The entire records of the case with your letter referred to above are herewith returned.

I have to

Ks 18/9
For Offg: Secy to Govt 20/9/14

Hy. 16
17.9.14

List of enclosures,

Copied by 23/9

Examined by

GPB—25,000—4-3-13